

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Dwayne Bernard Terry,)
Plaintiff,) C/A No. 1:10-2217-MBS
vs.)
W.T. Johnson, Capt. Mullins, and)
Ken Williams,)
Defendants.)

O R D E R

At the time of filing of this action, Plaintiff Dwayne Bernard Terry was detained at the Marion County Detention Center in Mullins, South Carolina. Plaintiff, proceeding pro se, alleges that his constitutional rights were violated in various respects. Plaintiff brings the within action pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Shiva V. Hodges for pretrial handling.

This matter is before the court on motion for summary judgment filed by Defendants on March 2, 2011. On March 3, 2011, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the summary judgment procedures and the possible consequences of failing to respond adequately. Plaintiff filed no response to Defendants' motion. On September 16, 2011, the Magistrate Judge issued an order directing Plaintiff to advise the court whether he wished to continue with this case by September 30, 2011. The September 16, 2011 letter was sent to Plaintiff at his last known address at Marion County Detention Center, 2715 East Highway 76, Mullins, South Carolina 29574. The envelope containing Plaintiff's copy of the September 16, 2011 order was returned to the Office of the Clerk of court on September 21, 2011, marked "Released - 09/11/11."

On September 21, 2011, the Magistrate Judge filed a Report and Recommendation in which she noted that Plaintiff had been advised by order filed October 7, 2010 to keep the court apprised of any change in address, and that the failure to inform the court of a change in address could result in dismissal of Plaintiff's case. Because Plaintiff failed to comply with the October 7, 2010, the Magistrate Judge recommended that the case be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(b). A copy of the Report and Recommendation was sent to Plaintiff at his last known address at the Marion County Detention Center. The envelope containing the Report and Recommendation was returned to the Clerk's Office on September 28, 2011, marked "Released from MCDC."

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

It appears that Plaintiff no longer wishes to pursue this action. The court concurs in the Report and Recommendation and incorporates it herein by reference. The within action is dismissed with prejudice pursuant to Rule 41(b).

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina
October 19, 2011

NOTICE OF RIGHT TO APPEAL

**Plaintiff is hereby notified of the right to appeal this order
pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**